

M. Kashani

TTAB



October 25, 2008

74013761

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Enclosed please find eight page petition, Proof of Service,
and Exhibits A1, and Exhibits A - U, for

In the matter of trademark Registration No. 1651872
For the mark Moth•Away
Date registered July 23, 1991

M. Kashani, Petitioner

v.

Richards Homewares, Inc., Registrant

PETITION TO CANCEL

Also enclosed is the fee of \$300. check # 110

Sincerely,

A handwritten signature in black ink, appearing to be "M Kashani".

M. Kashani



10-28-2008

U.S. Patent & TM/TO/TT Mail Rpt Ct #

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark Registration No. 1651872
For the mark Moth•Away
Date registered July 23, 1991

M. Kashani, Petitioner

v.

Richards Homewares, Inc., Registrant

PETITION TO CANCEL

PETITIONER, an individual:

M. Kashani

P. O. Box 8129

Rancho Santa Fe, CA 92067

Tel. 858 217 4635

FAX 619 996 2004

Email: sales@mothaway.com ("Petitioner")

To the best of petitioner's knowledge, the name and address of the
current owner of the registration are

Richards Homewares, Inc., an Oregon corporation

P. O. BOX 5397

Portland, OR 97227-5397 ("Registrant")

The above-identified petitioner believes that he will be damaged

by the above-identified registration No. 1651872, and hereby petitions to cancel the

mark in its entirety, as to all of the goods in the class IC 001 (blend of herbs used

as a moth repellant).

11/04/2008 SWILSDM1 00000008 1651872

01 FC:6401

300.00 DP

The grounds for cancellation are as follows:

1. Petitioner's two trademark applications for MothAway (one word), serial numbers 78/672316 and 78/672249 were both denied due to registrant's improperly issued trademark, **such that petitioner has been damaged by the maintenance of trademark registration 1651872** (See Exhibit A, final notices of non-allowance from USPTO citing registration 1651872 as the reason for denial). In these final refusals to register petitioner's mark it was suggested that a collateral attack (e.g. petition to cancel) on the validity of registrant's mark must be made outside the application process. Hence, this Petition to Cancel the offending trademark.

Unless the offending trademark is cancelled, petitioner will suffer damage due to inability to register his own marks that have been deemed registrable *but for* registrant's 1651872 registration.

2. **Petitioner is also being damaged by the mere fact that there is uncertainty as to whether someone (namely, registrant) has the exclusive rights to the Moth•Away name.** Petitioner is frequently contacted by customers (see Exhibit A1, Attached, letter from irate consumer) who mistake the registrant's now defunct (see below) product Moth•Away for petitioner's current product MothAway. To eliminate this confusion, registrant's mark for a product it no longer manufactures (see below) and has no further right to claim as a registered trademark, should be cancelled, so that petitioner can claim its rightful place as the true and only owner of the MothAway mark.

3. Petitioner has been using its mark MothAway (one word) in commerce since at least January 1, 1987, and continues to do so with daily sales in interstate commerce. **This predates registrant's published date in commerce of January 31, 1990.** (See below Paragraph 4(a)) As such, **petitioner is the true proprietor of this trademark.**

4. **The registrant Richards Homeware, Inc. has ceased to manufacture MothAway for at least two years now. (Trademark Act section 14)**

- a. Registrant's current website (available at <http://www.richardshomewares.com> , printout attached as Exhibit B) no longer makes any reference to Moth•Away. Richards continues to manufacture its line of hardware accessories for closets and wooden storage containers, but no Moth•Away. A printout of its website from over one year ago, dated April 24, 2007, also does not mention Moth•Away (see attached Exhibit C)

This was further confirmed via email communication with Richards Homewares, Inc., in which their customer service representative Julie Morales confirmed that "We do not make moth away" but that some stores may still have old stock (See Exhibit D, copy of exchanged emails dated April 19, 2007).

One retailer, Shop.com confirmed via exchanged emails (See Exhibit E) that "we will pull all the remaining items [of Moth•Away] from our warehouse and send them back to the manufacturer" because it was all expired old stock. The reason that nothing remains

but old, expired stock is that the product has not been manufactured now for at least two years.

These two factors – discontinuation of manufacture, and failure to support resellers with current unexpired product, support non-use of the mark by the registrant. The failure to provide current unexpired product to the marketplace particularly supports a lack of intent to resume use of the mark.

When owner ceases to use a mark without an intent to resume use in the reasonably foreseeable future, the mark is said to have been "abandoned." *Silverman v. CBS, Inc.*, 870 F.2d 40, 45 (2d Cir. 1989).

Where a mark owner discontinues using it, others are no longer restrained from using it because it ceases to be associated in the public's mind with the owner's goods. *Manhattan Industries, Inc. v. Sweater Bee by Banff, Ltd.*, 627 F.2d 628, 630 (2d Cir. 1980).

As a current manufacturer of MothAway, petitioner M. Kashani is entitled to use of the mark.

- b.** Indeed, Richards Homewares' prior application for a wooden clothes hanger called Moth•Away (application 78156913) was abandoned on August 15, 2006 (See Exhibit F, prosecution history for 78156913 Moth Away). **This abandonment of a similar mark tends to establish a lack of intent by the registrant to expand use of the mark.**

- 5. The mark Moth•Away has become generic (Trademark Act section 23), or at best descriptive and lacking secondary meaning.**

- a. Petitioner has been selling its own product called mothaway at its website <http://www.mothaway.com> since at least March 7, 2005 (see attached Exhibit G printout of <http://www.mothaway.com> and Exhibit H, WhoIS registrant information for website confirming registration date of [mothaway.com](http://www.mothaway.com) March 7, 2005, to petitioner), and via mail order since at least January 1, 1987.
- b. Others have been selling moth repellent products also named MothAway for many years now, including on the internet, for example <http://www.recipesource.com/misc/non-food/crafts/00/rec0017.html> (printout of website attached, Exhibit I), <http://www.herbsvt.com/newpetandhouse.html> (Exhibit J), http://wiseways.com/Merchant2/merchant.mvc?Screen=PROD&Store_Code=WH&Product_Code=RMAS&Category_Code= (Exhibit K), Moth Away Linen Sachet at <http://www.everlastingherbfarm.net/vintage.htm> (Exhibit L), Moth Away at <http://www.medicinebeeherbals.com/store.php?item=243> (Exhibit M), Moth Away sachet at <http://www.kettlebyherbfarms.com/itm00157.htm> (Exhibit N), Moth Away potpourri at <http://www.thepotpourrishack.com/catalog.php?category=24> (Exhibit O), moth away sachet at http://www.peacevalleylavender.com/cart.php?target=product&product_id=16218&category_id=252 (Exhibit P), moth away sachet at <http://www.cabincreation.com/remedies.html> (Exhibit Q), rosemary

moth-away sachet at

<http://www.differentdaisy.com/nexternalhtml/rosemary-moth-away-sachet-.htm> (Exhibit R), Moth Away sachets at

<http://www.moonwiseherbs.com/othergoodies.htm> (Exhibit S), moth away sachets at

http://www.etsy.com/view_listing.php?listing_id=14108795 (Exhibit T)

These and many other examples demonstrate that the term “Moth•Away” is rampant in commerce, and has become demonstrably generic. “Generic terms are not registrable, and a registered mark may be canceled at any time on the grounds that it has become generic.”

Park 'N Fly, Inc. v. Dollar Park and Fly, Inc., 469 U.S. 189, 194, 83 L. Ed. 2d 582, 105 S. Ct. 658 (1985).

Courts have often determined whether a mark is generic using the “who-are-you/what-are-you” test: “A mark answers the buyer’s questions ‘Who are you?’ ‘Where do you come from?’ ‘Who vouches for you?’ But the generic name of the product answers the question ‘What are you?’” *Filipino Yellow Pages, Inc. v. Asian Journal Publ’ns, Inc.*, 198 F.3d 1143, 1147 (9th Cir. 1999) (quoting *Official Airline Guides, Inc. v. Goss*, 6 F.3d 1385, 1391 (9th Cir. 1993) (quoting 1 J. Thomas McCarthy, *Trademarks and Unfair Competition*, § 12.01 (3d ed. 1992))) (alterations omitted). In this situation the term “moth away” has certainly become more of a term to describe what the product is – something to drive moths away – than anything

associated with a particular brand.

The Moth•Away mark, even if not generic, is at best descriptive and has acquired no secondary meaning. Indeed, it has lost any secondary meaning it might have once had. The question of secondary meaning is one of fact." *Levi Strauss & Co. v. Blue Bell, Inc.*, 778 F.2d 1352, 1355 (9th Cir. 1985) (en banc). To determine whether a **descriptive** mark has secondary meaning, a finder of fact considers: "(1) whether actual purchasers of the product bearing the claimed trademark associate the trademark with the producer, (2) the degree and manner of advertising under the claimed trademark, (3) the length and manner of use of the claimed trademark, and (4) whether use of the claimed trademark has been exclusive." *Levi Strauss*, 778 F.2d at 1358 (quoting *Transgo, Inc. v. AJAC Transmission Parts Corp.*, 768 F.2d 1001, 1015 (9th Cir. 1985)) (alteration omitted).

Under this analysis, (2) and (3) are gainsayed by the fact that registrant's own website has for some time now ceased to promote the product in any way, and makes no mention of the product. Indeed, the fact that the registrant has ceased all manufacture of the product is further contradiction of prong (3). And of course, the great numbers of other, nearly identical "moth away" products on the market support prongs (1) and (4) – the fact that there are so many others who use the same mark contradicts any possible claim that anyone might associate the mark exclusively with registrant's product.

- c. In July 2005, registrant's attorney wrote to Petitioner and demanded that he cease using the trademark MothAway (see Exhibit U) but abandoned this claim and stopped writing to Petitioner years ago **when registrant realized from petitioner's response in August 2005 (Exhibit U) that registrant's own mark was weak and generic and could not be maintained.** As such registrant himself recognizes the futility of trying to assert the value of the mark, Moth•Away.
- d. **The term Moth•Away is at best descriptive,** in that it describes driving moths away. A descriptive mark such as this is so generic and non-distinctive that it cannot be maintained. Evidence of so many others using this mark to describe a nearly identical product is further proof that the mark is or has become generic.

FOR ALL OF THE ABOVE REASONS, the registered trademark Moth•Away 1651872 should be cancelled.

By  October 24, 2008
M. Kashani

PROOF OF SERVICE

The undersigned hereby certifies that a copy of this Petition has been served upon all parties, at their address of record below by First Class Mail on this date.

Served upon:

M Kashani
P. O. Box 8129
Rancho Santa Fe, CA 92067
UNITED STATES

Richards Homewares, Inc.
P. O. BOX 5397
Portland, OR 972275397
UNITED STATES

October 25, 2008

A handwritten signature in black ink, appearing to be 'M Kashani', is written over a horizontal line.

M. Kashani

EXHIBIT A1

letter from irate consumer who mistook the registrant's now defunct product
Moth•Away for petitioner's current product MothAway

(attached pictures are of registrant's defunct old Moth•Away – providing that irate
customer was writing about registrant's defunct product)

Subject: Feedback on your product

Date: Tuesday, October 14, 2008 7:24 AM

From: agreenebau@aol.com

To: <sales@mothaway.com>, <contact@mothaway.com>

I just got screwed by relying on Moth Away this year. Screwed. I had an airtight trunk, and used tons and tons of Moth Away. I just opened it now, and my sweaters have been RAVAGED by moths. Tons of cashmere, useless. Your product is NOT effective. I'm so sorry now I trusted it.

STACEY GREENEBAUM

New York City

McCain or Obama? Stay updated on coverage of the Presidential race while you browse - Download Now! <<http://toolbar.aol.com/elections/download.html?ncid=emlweusdown00000002>>

Subject: These are the products I used
Date: Tuesday, October 14, 2008 9:49 AM
From: Stacey Greenebaum <AGreenebau@aol.com>
To: "sales@mothaway.com" <sales@mothaway.com>

I used both these tea bag sizes, which I bought at Bed Bath Beyond.
Are they yours??



Stacey Greenebaum
917.318.4800



EXHIBIT A

Exhibit A, final notices of non-allowance from USPTO for Petitioners' Applications
78/672316 and 78/672249

citing registration 1651872 as the reason for denial

Document Description: **Off Action Outgoing** Mail / Create Date: **13-Jun-2007**

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To: Kashani, M (mothaway@cox.net)
Subject: TRADEMARK APPLICATION NO. 78672316 - MOTHAWAY - N/A
Sent: 6/13/2007 11:34:53 AM
Sent As: ECOM102@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE**SERIAL NO:** 78/672316**MARK:** MOTHAWAY***78672316*****CORRESPONDENT ADDRESS:**

KASHANI, M
PO BOX 9008
RANCHO SANTA FE, CA 92067-4008

RESPOND TO THIS ACTION:<http://www.uspto.gov/teas/eTEASpageD.htm>**GENERAL TRADEMARK INFORMATION:**<http://www.uspto.gov/main/trademarks.htm>**APPLICANT:** Kashani, M**CORRESPONDENT'S REFERENCE/DOCKET****NO:**

N/A

CORRESPONDENT E-MAIL ADDRESS:mothaway@cox.net**OFFICE ACTION**

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

ISSUE/MAILING DATE: 06/13/2007**THIS IS A FINAL ACTION.**

This letter responds to applicant's communication filed April 30, 2007. Registration was refused under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), because of a likelihood of confusion between the applicant's mark and U.S. Registration No. 1651872.

The examining attorney has considered applicant's arguments carefully regarding the likelihood of confusion issue, but has found them unpersuasive. For the reasons stated below, the refusal under Section 2(d) is maintained and made **FINAL**.

Additional Fee

Applicant must submit an additional application processing fee of \$50 per class because applicant has not complied with the requirement to file the response via the Trademark Electronic Application System (TEAS). 37 C.F.R. §§2.6(a)(iv), 2.23(a)(1) and 2.23(b).

Section 2(d) Refusal – Final

Similarity of the Marks

The issue in a likelihood of confusion case is whether the marks create the same overall impression. *Visual Information Institute, Inc. v. Vicuna Industries Inc.*, 209 USPQ 179 (TTAB 1980). The focus is on the recollection of the average purchaser who normally retains a general rather than specific impression of trademarks. *Chemetron Corp. v. Morris Coupling & Clamp Co.*, 203 USPQ 537 (TTAB 1979); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975); TMEP section 1207.01(b). In this case, applicant's mark MOTHAWAY and registrant's mark MOTH•AWAY are very similar in appearance and are likely to have the same connotation and commercial impression.

Applicant argues that registrant is not using the mark anymore and offers submissions to support the assertion. Section 7(b) of the Trademark Act, 15 U.S.C. §1057(b), provides that a certificate of registration on the Principal Register shall be prima facie evidence of the validity of the registration, of registrant's ownership of the mark and of registrant's exclusive right to use the mark in commerce in connection with the goods or services specified in the certificate. Accordingly, during an *ex parte* prosecution, applicants will not be heard on matters that constitute a collateral attack on the cited registration (e.g., a registrant's non-use of the mark). See *In re Dixie Restaurants*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed Cir. 1997). Furthermore, applicant argues that it has used its mark in commerce before the use of the mark in the cited registration. Applicant's claim of priority of use is not relevant to this *ex parte* proceeding. *In re Calgon Corp.*, 435 F.2d 596, 168 USPQ 278 (C.C.P.A. 1971). Section 7(b) of the Trademark Act, 15 U.S.C. §1057(b), provides that a certificate of registration on the Principal Register is *prima facie* evidence of the validity of the registration, of registrant's ownership of the mark and of registrant's exclusive right to use the mark in commerce in connection with the goods or services specified in the certificate. During *ex parte* prosecution, the trademark examining attorney has no authority to review or decide on matters that constitute a collateral attack on the cited registration. TMEP §1207.01(d)(iv).

The examining attorney must resolve any doubt as to the issue of likelihood of confusion in favor of the registrant and against applicant who has a legal duty to select a mark that is totally dissimilar to trademarks already being used. *Burroughs Wellcome Co. v. Warner-Lambert Co.*, 203 USPQ 191 (TTAB 1979). Because the marks are very similar in appearance, connotation and commercial impression, confusion as to source is likely.

Similarity of the Goods

With respect to the goods identified by the two marks, the mark MOTH•AWAY is registered for "blend of herbs used as a moth repellent," whereas applicant seeks to register its mark "insect repellents." Applicant's and the registrant's goods are essentially the same. In particular, applicant's specimen of record shows that its goods are a "blend of herbs and essential pure oils to drive away moths." This description is essentially the same as the description for registrant's goods.

Therefore, purchasers are likely to encounter applicant's goods and registrant's goods in the same channels of trade, and under such circumstances could mistakenly believe that the goods come from a common source. Accordingly, for the reasons stated above, refusal to register on the Principal Register under Section 2(d) of the Trademark Act is herein made **FINAL**.

Applicant's Options

Please note that the only appropriate responses to a final action are either (1) compliance with the outstanding requirements, if feasible, or (2) filing of an appeal to the Trademark Trial and Appeal Board. 37 C.F.R. Section 2.64(a). If the applicant fails to respond within six months of the mailing date of this refusal, this Office will declare the application abandoned. 37 C.F.R. Section 2.65(a).

TEAS PLUS APPLICANTS MUST SUBMIT DOCUMENTS ELECTRONICALLY OR SUBMIT FEE: TEAS Plus applicants should submit the following documents using the Trademark Electronic Application System (TEAS) at <http://www.uspto.gov/teas/index.htm>: (1) written responses to Office actions; (2) preliminary amendments; (3) changes of correspondence address; (4) changes of owner's address; (5) appointments and revocations of attorney; (6) amendments to allege use; (7) statements of use; (8) requests for extension of time to file a statement of use, and (9) requests to delete a §1(b) basis. If any of these documents are filed on paper, they must be accompanied by a \$50 per class fee. 37 C.F.R. §§2.6(a)(1)(iv) and 2.23(a)(i). Telephone responses will not incur an additional fee. NOTE: In addition to the above, applicant must also continue to accept correspondence from the Office via e-mail throughout the examination process in order to avoid the additional fee. 37 C.F.R. §2.23(a)(2).

/Christopher L. Buongiorno/
Christopher L. Buongiorno
Law Office 102
(571) 272-9251

RESPOND TO THIS ACTION: If there are any questions about the Office action, please contact the assigned examining attorney. A response to this Office Action should be filed using the Office's Response to Office action form available at <http://www.uspto.gov/teas/eTEASpageD.htm>. If notification of this Office action was received via e-mail, no response using this form may be filed for 72 hours after receipt of the notification. **Do not attempt to respond by e-mail as the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the

response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

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If you need help:

- **General trademark information:** Please e-mail TrademarkAssistanceCenter@uspto.gov, or telephone either 571-272-9250 or 1-800-786-9199.
- **Technical help:** For instructions on how to use TDR, or help in resolving technical glitches, please e-mail TDR@uspto.gov. If outside of the normal business hours of the USPTO, please e-mail [Electronic Business Support](#), or call 1-800-786-9199.
- **Questions about USPTO programs:** Please e-mail [USPTO Contact Center \(UCC\)](#).

NOTE: Within any e-mail, please include your telephone number so we can talk to you directly, if necessary. Also, include the relevant serial number or registration number, if existing.

Document Description: **Offc Action Outgoing** Mail / Create Date: **16-Jun-2007**

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To: Kashani, M (mothaway@cox.net)
Subject: TRADEMARK APPLICATION NO. 78672249 - MOTHAWAY - N/A
Sent: 6/16/2007 3:19:35 PM
Sent As: ECOM107@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE**SERIAL NO:** 78/672249**APPLICANT:** Kashani, M***78672249*****CORRESPONDENT ADDRESS:**

KASHANI, M
PO BOX 9008
RANCHO SANTA FE, CA 92067-4008

RETURN ADDRESS:
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MARK: MOTHAWAY**CORRESPONDENT'S REFERENCE/DOCKET NO:** N/A**CORRESPONDENT EMAIL ADDRESS:**mothaway@cox.net

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

RESPONSE TIME LIMIT: TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

MAILING/E-MAILING DATE INFORMATION: If the mailing or e-mailing date of this Office action does not appear above, this information can be obtained by visiting the USPTO website at <http://tarr.uspto.gov/>, inserting the application serial number, and viewing the prosecution history for the mailing date of the most recently issued Office communication.

Serial Number 78/672249

Applicant is requesting reconsideration of a final refusal dated November 28, 2006.

After careful consideration of the law and facts of the case, the examining attorney must deny the request for reconsideration and adhere to the final action as written since no new facts or reasons have been presented that are significant and compelling with regard to the point at issue.

The following discussion addresses the additional arguments that were not addressed in the final Office action:

In its request for reconsideration, applicant indicated that its mark "has been in commerce since at least January 1, 1987, far predating use in commerce alleged in 1651872."

Applicant's claim of priority of use is not relevant to this *ex parte* proceeding. *In re Calgon Corp.*, 435 F.2d 596, 168 USPQ 278 (C.C.P.A. 1971). Section 7(b) of the Trademark Act, 15 U.S.C. §1057(b), provides that a certificate of registration on the Principal Register is *prima facie* evidence of the validity of the registration, of the registrant's ownership of the mark and of the registrant's exclusive right to use the mark in commerce in connection with the goods or services specified in the certificate. During *ex parte* prosecution, the trademark examining attorney has no authority to review or decide on matters that constitute a collateral attack on the cited registration. TMEP §1207.01(d)(iv).

Applicant also argued, "Richards Homewares, Inc., the registrant of mark 1651872, has ceased to manufacture [pertinent identified goods]."

Applicant's argument that the registration owner of the cited mark has abandoned its trademark is information relevant to a formal cancellation proceeding and is not appropriate matter for *ex parte* examination. TMEP §1207.01(d)(iv).

Section 7(b) of the Trademark Act, 15 U.S.C. §1057(b), provides that a certificate of registration on the Principal Register shall be *prima facie* evidence of the validity of the registration, of the registrant's ownership of the mark and of the registrant's exclusive right to use the mark in commerce in connection with the goods or services specified in the certificate. During *ex parte* prosecution, an applicant will not be heard on matters that constitute a collateral attack on the cited registration such as a registrant's nonuse of the mark. *See In re Dixie Restaurants*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997); *In re Calgon Corp.*, 435 F.2d 596, 168 USPQ 278 (C.C.P.A. 1971); *Cosmetically Yours, Inc. v. Clairol Inc.*, 424 F.2d 1385, 1387, 165 USPQ 515, 517 (C.C.P.A. 1970); *In re Peebles Inc.* 23 USPQ2d 1795, 1797 n. 5 (TTAB 1992); *In re White Swan Ltd.*, 8 USPQ2d 1534 (TTAB 1988); *In re Pollio Dairy Products Corp.*, 8 USPQ2d 2012, 2014-15 (TTAB 1988).

Accordingly, applicant's request for reconsideration is *denied* and the final refusal is continued. The time for appeal runs from the date the final action was mailed. 37 C.F.R. Section 2.64(b); TMEP Section 715.03(c).

Because applicant has not filed an appeal with the Trademark Trial and Appeal Board, and there is no time remaining in the response period, the application will be declared abandoned in due course for failure to file a persuasive and complete response to the final Office action. 37 C.F.R. §2.65(a).

An unsuccessful request for reconsideration of a final refusal that is not accompanied by a notice of appeal is treated as an "incomplete response" to the final Office action. 37 C.F.R. §2.64(a); TMEP §1714.01(f)(ii). Where the trademark examining attorney has continued the refusal, and the deadline for response to the final action has expired, then the application is deemed abandoned. 15 U.S.C. §1062(b); 37 C.F.R. §2.65(a); TMEP

§715.03(c). The filing of a request for reconsideration does not extend the time for filing a proper response to the final action, which runs from the date the final action was mailed. 37 C.F.R. §2.64(b); TMEP §§715.03 and 715.03(c).

PLEASE NOTE: If a request for reconsideration is denied and the application is held abandoned, then applicant may file a petition to the Director under 37 C.F.R. §2.146 to reverse the trademark examining attorney's holding of abandonment. TMEP §715.03(a). However, the trademark examining attorney's action will be reversed on petition only if there has been clear error or abuse of discretion. See TMEP §1713. The unintentional delay standard of 37 C.F.R. §2.66 does not apply in this situation. See TMEP §1714.01(f)(ii). A fee of \$100 must accompany the petition. 37 C.F.R. §2.6.

If applicant has questions about its application or needs assistance in responding to this Office action, please telephone the assigned trademark examining attorney directly at the number below.

/Dawn Han/
Trademark Examining Attorney
Law Office 107
(571) 272-9432

NOTICE OF NEW PROCEDURE FOR E-MAILED OFFICE ACTIONS: In late spring 2007, for any applicant who authorizes e-mail communication with the USPTO, the USPTO will no longer directly e-mail the actual Office action to the applicant. Instead, upon issuance of an Office action, the USPTO will e-mail the applicant a notice with a link/web address to access the Office action using Trademark Document Retrieval (TDR), which is located on the USPTO website at <http://portal.uspto.gov/external/portal/tow>. The Office action will not be attached to the e-mail notice. Upon receipt of the notice, the applicant can then view and print the actual Office action and any evidentiary attachments using the provided link/web address. TDR is available 24 hours a day, seven days a week, including holidays and weekends. This new process is intended to eliminate problems associated with e-mailed Office actions that contain numerous attachments.

HOW TO RESPOND TO THIS OFFICE ACTION:

- **ONLINE RESPONSE:** You may respond using the Office's Trademark Electronic Application System (TEAS) Response to Office action form available on our website at <http://www.uspto.gov/teas/index.html>. If the Office action issued via e-mail, you must wait 72 hours after receipt of the Office action to respond via TEAS. **NOTE: Do not respond by e-mail. THE USPTO WILL NOT ACCEPT AN E-MAILED RESPONSE.**
- **REGULAR MAIL RESPONSE:** To respond by regular mail, your response should be sent to the mailing return address above, and include the serial number, law office number, and examining attorney's name. **NOTE: The filing date of the response will be the date of receipt in the Office, not the postmarked date.** To ensure your response is timely, use a certificate of mailing. 37 C.F.R. §2.197.

STATUS OF APPLICATION: To check the status of your application, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov>.

VIEW APPLICATION DOCUMENTS ONLINE: Documents in the electronic file for pending applications can be viewed and downloaded online at <http://portal.uspto.gov/external/portal/tow>.

GENERAL TRADEMARK INFORMATION: For general information about trademarks, please visit the Office's website at <http://www.uspto.gov/main/trademarks.htm>.

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY SPECIFIED ABOVE.

[TDR Home](#)

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[FAQ: Are you seeing only the first page of this PDF document?](#)

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- **General trademark information:** Please e-mail TrademarkAssistanceCenter@uspto.gov, or telephone either 571-272-9250 or 1-800-786-9199.
- **Technical help:** For instructions on how to use TDR, or help in resolving **technical** glitches, please e-mail TDR@uspto.gov. If outside of the normal business hours of the USPTO, please e-mail [Electronic Business Support](#), or call 1-800-786-9199.
- **Questions about USPTO programs:** Please e-mail [USPTO Contact Center \(UCC\)](#).

NOTE: Within any e-mail, please include your telephone number so we can talk to you directly, if necessary. Also, include the relevant serial number or registration number, if existing.

EXHIBIT B

<http://www.richardshomewares.com> , CURRENT WEBSITE

attached as Exhibit B



[assembly](#)

[home](#)

[contact](#)

[log in](#)

[history](#)

Help

click here
for product
assembly
information

**Garment
Rack**



National Sales Office
(212) 889-0882



welcome storage

cedar

Covered Organizer

Richards

©2007 Richards Homewares, Inc.
e-mail: info@richardshomewares.com



assembly

home

contact

log in

history


 Help

click here
for product
assembly
information

homewares

history

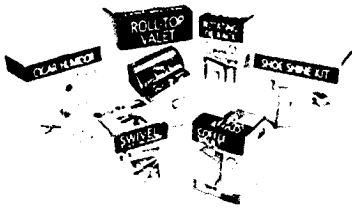
Richards Homewares was started in 1939 in Los Angeles, California by Myron Freeland under the name of Richards Plastic Company. Myron took sheets of vinyl, die-cut them, sewed elastic around the edges and sold them to the dental industry as head rest covers for dental chairs.

In the late 40's his son Bernard joined the business and they began to develop consumer products from the same vinyl: sweater and blanket bags, suit and dress covers, indoor furniture slip covers, etc. These were marketed to the notions department of department stores in Los Angeles. Over the years more and more products were developed, primarily from vinyl. At one time the product line included raincoats, and was sold to every department store chain in the southwest.

Richards was the first manufacturer to go off-shore for sourcing, and in the early 70's grew to become a nationwide supplier to the notions industry. In 1976, Bernard's son Robert joined the business. In the early 80's Robert began to push the company into a wider range of product lines. Wooden hangers, steel garment racks, wardrobes, and canvas garment bags were added. At the same time, Richards began leading the industry with unique products and features such as injection molded ventilated shelving for sweater closets, the patented maxi-rack frame, and patented frameless garment bag, to name a few.



In 1989, after 50 years, the name of the company was changed to Richards Homewares, Inc., which better described the nature of the business as it had evolved. In 1994, the company re-located to Portland, Oregon, an environment where it could afford larger facilities to handle future growth. Today, Richards boasts hundreds of items and continues, year after year to develop new products for home, storage, and closet organization.



Richards

©2007 Richards Homewares, Inc.
e-mail: info@richardshomewares.com

EXHIBIT C

<http://www.richardshomewares.com> , WEBSITE from April 24, 2007,

attached as Exhibit C

CONTACT

HISTORY

LOG-IN

**PRODUCT
ASSEMBLY INFO**

Welcome to

Richards

©2006 Richards Homewares, Inc. National Sales Office (212) 889-0932
e-mail: richards@richardshomewares.com

HISTORY

LOG-IN

**PRODUCT
ASSEMBLY INFO**



Customer Service:

1-800-446-3880

Sales Office:

Portland, Oregon 97227

2006 Richards Homewares, Inc. National Sales Office (212) 889-0932
e-mail:

CONTACTThe logo for Richards Homewares, Inc. features the word "Richards" in a large, stylized, cursive script. Below it, "Richards Homewares, Inc." is written in a smaller, clean, sans-serif font.**LOG-IN****PRODUCT
ASSEMBLY INFO**

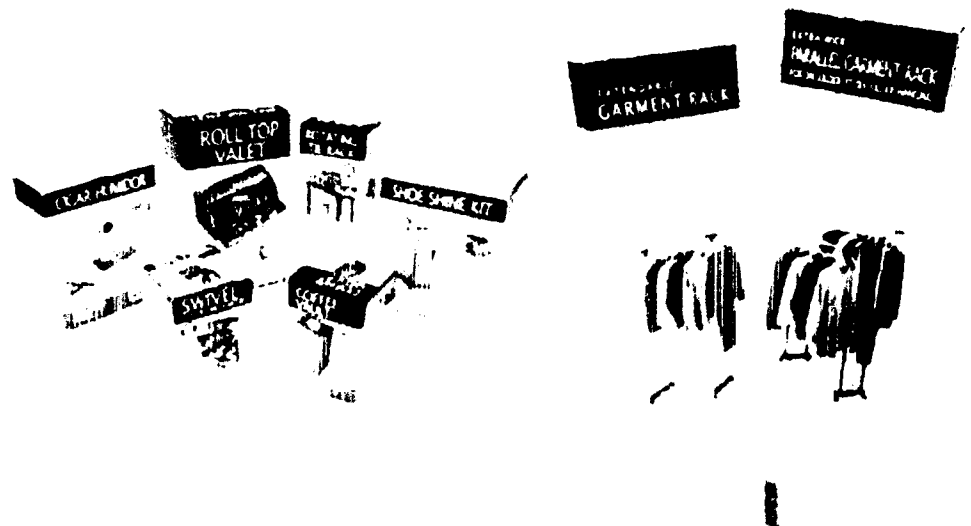
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2006 Richards Homewares, Inc. National Sales Office (212) 889-0932
e-mail:

CONTACT

HISTORY



Login:

Password:

Submit

**PRODUCT
ASSEMBLY INFO**

2006 Richards Homewares, Inc. National Sales Office (212) 889-0932
e-mail: richards@richards-homewares.com

CONTACT

HISTORY

LOG-IN



**Please enter the First 4 Digits
of Part Number:**

Find Files

2006 Richards Homewares, Inc. National Sales Office (212) 889-0932
e-mail:

EXHIBIT D

copy of exchanged emails dated April 19, 2007,
verifying that Richards Homewares does NOT manufacture MothAway

Subject: RE: Moth*Away

Date: Thursday, April 19, 2007 2:25 PM

From: Julie Morales <JMorales@richardshomewares.com>

To: <CRYELLOW@COX.NET>, Customer Service
<CustomerService@richardshomewares.com>

Conversation: Moth*Away

Hi,

We do not make moth away. Some of our clients that carry moth away are Bed Bath and Beyond, www.stacksandstacks.com <<http://www.stacksandstacks.com/>>

Thank you.

-----Original Message-----

From: info

Sent: Thursday, April 19, 2007 2:24 PM

To: Customer Service

Subject: FW: Moth*Away

From: Crome Yellow[SMTP:CRYELLOW@COX.NET]

Sent: Thursday, April 19, 2007 2:22:18 PM

To: info

Subject: Moth*Away

Auto forwarded by a Rule

Does Richards Homewares still make the Moth*Away product? No longer seems to be sold anywhere.

Also, I did not find it anywhere on your website.

Thank you.

EXHIBIT E

copy of exchanged emails dated April 19, 2007,
with SHOP.Com verifying they will pull all old stock of Moth•Away
from their Shelves

Subject: Re: 'SHOP.COM=002-644-380' Question (other)

Date: Wednesday, May 7, 2008 10:11 PM

From: Baccarat Pen <baccaratpen@cox.net>

To: "SHOP.COM Customer Service" <customerservice@shop.com>, <customerservice@bedbathstore.com>

Yes it is strange – I contacted the manufacturer Richards Homewares directly in Oregon, and they said they stopped manufacturing MothAway long ago, which is why whatever stock they have left is apparently long expired.

:-{

On 5/7/08 2:41 PM, "SHOP.COM Customer Service" <customerservice@shop.com> wrote:

Hello.

Your initial inquiry was forwarded to our OneCart® partner store for their reply. Just in case you did not also receive the reply directly, please see their reply below. If you have any further concerns about this issue or if this does not answer your inquiry please let us know.

We appreciate your business, and thank you for shopping with SHOP.COM.

Sincerely,

Linda

Customer Service

SHOP.COM

All your favorite stores.

OneCart® convenience.

We are so sorry - we just received the shipment from the manufacturer.

If you send me your order number, we will refund you in full. We sincerely thank you for notifying us- we will pull all the remaining items from our warehouse and send them back to the manufacturer.

Please send me your order info and we will process your refund.

Susan

Customer Service

Bedbathstore

1-866-640-2400 ext 206

From: SHOP.COM Customer Service [mailto:customerservice@shop.com]

Sent: Wednesday, May 07, 2008 7:12 AM

To: customerservice@bedbathstore.com

Subject: RE:'SHOP.COM=002-644-380' Question (other)

Hi,

Please see customer product question below. You can either respond directly to the customer or reply to us and we'll forward the response. We thank you in advance for your prompt attention to this question.

For your convenience, I've included the link to the product.

http://www.shop.com/Moth_Away_Moth_Repellent-31588878-p!.shtml?trk=1 <http://www.shop.com/Moth_Away_Moth_Repellent-31588878-p!.shtml?trk=1>

Thank you
Nancy Collins
Customer Service

SHOP.COM <http://www.shop.com/Moth_Away_Moth_Repellent-31588878-p!.shtml?trk=1>
All your favorite stores.
OneCart® convenience.

-----Original Message-----

From: baccaratpen@cox.net <<mailto:baccaratpen@cox.net>> (baccaratpen@cox.net
<<mailto:baccaratpen@cox.net>>)
Date: Tuesday, May 06, 2008 07:00 PM
To: customerservice@shop.com <<mailto:customerservice@shop.com>> (customerservice@shop.com
<<mailto:customerservice@shop.com>>)
Subject: Question (other)

Message from: baccaratpen@cox.net <<mailto:baccaratpen@cox.net>> (Shopper ID:0)

Date sent: May 6, 2008 7:00 PM

Master Order Number:

Message:

The MothAway you are selling

<http://www.shop.com/+a-mothaway-st.shtml> <<http://www.shop.com/+a-mothaway-st.shtml>>
is long expired and should be destroyed.

This message (including any attachments) is intended only for the use of the individual or entity to which it is addressed and may contain information that is non-public, proprietary, privileged, confidential, and exempt from disclosure under applicable law or may constitute as attorney work product. If you are not the intended recipient, you are hereby notified that any use, dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, notify us immediately by telephone and (i) destroy this message if a facsimile or (ii) delete this message immediately if this is an electronic communication. Thank you.

I am using the free version of SPAMfighter for private users.
It has removed 59269 spam emails to date.
Paying users do not have this message in their emails.
Try SPAMfighter <<http://www.spamfighter.com/len>> for free now!

This message (including any attachments) is intended only for the use of the individual or entity to which it is addressed and may contain information that is non-public, proprietary, privileged, confidential, and exempt from disclosure under applicable law or may constitute as attorney work product. If you are not the intended recipient, you are hereby notified that any use, dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, notify us immediately by telephone and (i) destroy this message if a facsimile or (ii) delete this message immediately if this is an electronic communication. Thank you.

EXHIBIT F

Exhibit F, prosecution history for 78156913 Moth Away,
showing abandonment of Moth•Away application for clothes
hanger



Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Fri Oct 24 04:08:47 EDT 2008

TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	SEARCH OG	BOTTOM	HELP	PREV LIST	CURR LIST	NEXT LIST
FIRST DOC	PREV DOC	NEXT DOC	LAST DOC							

Logout Please logout when you are done to release system resources allocated for you.

Start List At: OR Jump to record: Record 3 out of 7

TARR Status	ASSIGN Status	TDR	TTAB Status
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(Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark MOTH AWAY
Goods and Services (ABANDONED) IC 020. US 002 013 022 025 032 050. G & S: wood clothes hangers
Mark Drawing Code (1) TYPED DRAWING
Serial Number 78156913
Filing Date August 22, 2002
Current Filing Basis 1B
Original Filing Basis 1B
Published for Opposition March 18, 2003
Owner (APPLICANT) Richards Homewares, Inc. CORPORATION OREGON 3810 N. Mississippi Ave. Portland OREGON 97227
Attorney of Record Charles D. McClung
Prior Registrations 1651872
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator DEAD
Abandonment Date June 11, 2006

TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	SEARCH OG	TOP	HELP	PREV LIST	CURR LIST	NEXT LIST
FIRST DOC	PREV DOC	NEXT DOC	LAST DOC							

[HOME](#) [SITE INDEX](#) [SEARCH](#) [eBUSINESS](#) [HELP](#) [PRIVACY POLICY](#)



NOTICE OF ABANDONMENT
MAILING DATE: Aug 15, 2006

The trademark application identified below was abandoned because the applicant failed to file for a statement of use or an extension of time.

If the delay in filing a response was unintentional, you may file a petition to revive the application with a fee. If the abandonment of this application was due to USPTO error, you may file a request for reinstatement. Please note that a petition to revive or request for reinstatement **must be received within two months from the mailing date of this notice.**

For additional information, go to <http://www.uspto.gov/teas/petinfo.htm>. If you are unable to get the information you need from the website, call the Trademark Assistance Center at 1-800-786-9199.

SERIAL NUMBER: 78156913
MARK: MOTH AWAY
OWNER: Richards Homewares, Inc.

Side - 2

UNITED STATES PATENT AND TRADEMARK OFFICE
COMMISSIONER FOR TRADEMARKS
P.O. BOX 1451
ALEXANDRIA, VA 22313-1451

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CHARLES D MCCLUNG
CHERNOFF VILHAUER MCCLUNG & STENZEL, LLP
1600 ODS TWR
601 SW SECOND AVE
PORTLAND , OR 97204

2004-04-26 - Extension 2 filed
2004-05-10 - Case File In TIGRS
2004-04-29 - PAPER RECEIVED
2003-11-19 - Extension 1 granted
2003-11-19 - Extension 1 filed
2003-11-24 - PAPER RECEIVED
2003-06-10 - Notice of allowance - mailed
2003-03-18 - Published for opposition
2003-02-26 - Notice of publication
2003-01-11 - Approved for Pub - Principal Register (Initial exam)
2003-01-08 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Charles D. McClung

Correspondent

Charles D. McClung
Chernoff Vilhauer McClung & Stenzel, LLP
1600 ODS Tower
601 SW Second Avenue
Portland, OR 97234
Phone Number: (503) 227-5631
Fax Number: (503) 228-4373

International Class: 020

Class Status: Active
wood clothes hangers

Basis: 1(5)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

Prior Registration Number(s):

1651872

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2006-08-15 - Abandonment Notice Mailed - No Use Statement Filed

2006-08-15 - Abandonment - No use statement filed

2005-11-29 - Extension 5 granted

2005-11-03 - Extension 5 filed

2005-11-03 - PAPER RECEIVED

2005-05-20 - Extension 4 granted

2005-05-02 - Extension 4 filed

2005-05-02 - PAPER RECEIVED

2004-10-29 - Extension 3 granted

2004-10-29 - Extension 3 filed

2004-10-29 - PAPER RECEIVED

2004-06-09 - Case File in TIGRS

2004-06-01 - PAPER RECEIVED

2004-04-26 - Extension 2 granted

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2008-10-25 02:36:09 ET

Serial Number: 78156913 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark (words only): MOTH AWAY

Standard Character claim: No

Current Status: Abandoned: No Statement of Use filed after Notice of Allowance was issued.

Date of Status: 2006-06-11

Filing Date: 2002-08-22

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 112

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 700 Intent To Use Section

Date In Location: 2005-11-17

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Richards Homewares, Inc.

Address:

Richards Homewares, Inc.
3810 N. Mississippi Ave.
Portland, OR 97227
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Oregon

Phone Number: (503) 227-5631

Fax Number: (503) 228-4373

GOODS AND/OR SERVICES

EXHIBIT G

Exhibit G printout of Petitioner's <http://www.mothaway.com>

Reproductions In Solid Sterling Silver



MothAway!™

Today is October 24, 2008

All Natural Odorless
Herbal Moth Repellent / Herbal Moth Repellant ...
since 1987.

Reenergize for Indefinite Use!



Now! Improved Formula
Not 10, not 13 but —
Now 14 Herbs

It is now
HIGH MOTH
SEASON!
and time to
act before it is
too late.



See what others have to
say about MothAway.

MothAway™ is an all natural blend of organic herbs and pure essential oils to drive away moths and carpet beetles.

Up until now, the only sure-fire way to drive away moths has been naphthalene or paradichlorobenzene based — how smelly and carcinogenic can you get!

MothAway™ will solve moth problems before they happen and give you peace of mind naturally, without any of the risks of carcinogenic chemical moth balls.

Hang one or two of these MothAway™ bags in your closet, or put one in a drawer or in a

clothing cabinet and presto! moths will be driven away, and there is no bad odor. The advantage to MothAway of course is that while the moths and carpet beetles hate the smell and run away humans love the fresh all-natural scent! Among the **fourteen** herbal ingredients and **seven** 100% pure essential oils is pure rosemary extract. This is the best in moth prevention and moth control. Yes, we got a little carried away but we decided to include every possible herbal substance known to repel moths.

For example, we use not just any cedar in our formulation, but only Eastern red cedar (*Juniperus virginiana*) that grows east of the Mississippi. All other forms of cedar, including Western red cedar which is a completely different botanical species, are not effective against moths. You may find such careless formulations in other moth repellants on the market, but not in ours. MothAway™'s active ingredients even include substances to repel grain moths, not just clothes moths. Also effective against carpet beetles. **Each bag contains nearly a full ounce (about 20 grams) of powerful herbs. NO OTHER HERBAL MOTH REPELLENT ON THE MARKET INCLUDES SO MUCH OF SO MANY ACTIVE INGREDIENTS — nothing else even comes close.**

Also, unlike other products, MothAway™ is made to order in small batches just before shipment and then vacuum sealed to preserve freshness. Other products may have been lying around in sachets exposed to the atmosphere for months if not years.

These will last one season and then can be re-energized with our Liquid Energizer™ for INDEFINITE use. Try that with any other product.

Anyone who has had even one fine pair of wool pants, coat or sweater eaten by moths knows how depressing this can be. Preservation experts recommend herbal rather than chemical agents to protect fine or collectible garments.

No home is immune from moths — even cedar lined closets can be ravaged — Get this odorless herbal moth repellant before it's too late! Because of the lack of bad smell, can be used year round without causing headaches or cancer.

Includes three bags total per order — what a small investment for a potential lifetime of smell and cancer free moth repellent!

Once you get this you will wonder — how did I ever get along without it? because that is what my friends, family and I have been thinking since I discovered it.

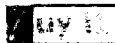
Moths are pesky critters and cause damage year round, so there is no time like the present to solve this problem.



Mail

Visitors to MothAway: **306362**

store.mothaway.com

[Home](#)[Mail](#)

<p>Before I used to get headaches from mothballs. Then I got smart and decided to go herbal. Like a charm, this voiks! -Louis K. Frawley</p>	<p>I love the fresh scent and it takes away my yearly worries about losing expensive clothes to moths. Thank you, Charlene</p>
<p>I never thought about moths until it was too late. Now I have moth away in every closet and drawer. Never again! Helen Cutler, Seal Beach, California</p>	<p>you were right! it works! - Frank LaPazzo. New York City</p>

MothAway™ is an all natural blend of herbs and essential pure oils to drive away moths and carpet beetles.

MothAway™ will solve moth problems before they happen and give you peace of mind naturally, without any of the risks of carcinogenic chemical moth balls.

<p>I really cannot imagine being without this product.</p>	<p>THE BEST PART IS THE LIQUID ENERGIZER --- THAT MAKES THE STUFF LAST AND LAST AND LAST. AND IT SMELLS VERY NICE. THE ONLY REASON I RE-ORDER IS TO GET INTO MORE PARTS OF THE HOUSE! -ODED HERON, San Francisco</p>
<p>i went away one summer and came home to a closet of eaten suits and fine trousers. i moped for a long time, and finally got on the internet and found this product. No problems since! and the instructions are very helpful. -James</p>	<p>It does work! the real Charlene</p>

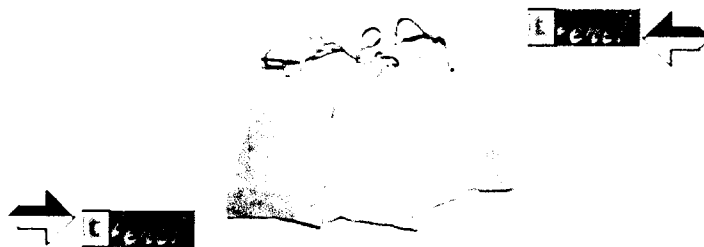
Camberly

These will last one season and then can be re-energized for INDEFINITE use. Try that with any other product.

<p>smells so nice i want to put it in every room! appreciate the product, Jennifer Gamer</p>	<p>The price is right - considering the large volume of product I ordered. Thank you for your help on the phone. I am not from the</p>
<p>KEEPING MOTHS AWAY WAS EASY, YOU WERE RIGHT. THANKS AGAIN FOR WALKING ME THROUGH IT. James R. Napp</p>	<p>I'm hooked! I want more. -Abi Lenard</p>

Once you get this you will wonder — how did I ever get along without it? because that is what my friends, family and I have been thinking since I discovered it.

Moths are pesky critters and cause damage year round, so there is no time like the present to solve this problem.


[Home](#)
[Mail](#)

Click here to pay via check or money order mailed to us: [MAIL ORDER](#).

Or check out via the shopping cart below and pay us online securely.

Available Items & Price List

Click to
Add to
Cart

<u>Item No.</u>	<u>Description</u>	<u>Price</u>	
#1	Set of 3 MothAway™ Bags (Each bag contains 300% pure essential oils - a 1/2 oz. bottle will supply nearly a full house (about 20 grams))	\$15.99	Add to Cart
#2	1/2 oz. MothAway™ Liquid Energizer™ (Each bottle contains 300% pure essential oils - a 1/2 oz. bottle will supply nearly a full house (about 20 grams))	\$16.99	Add to Cart
#3	SPECIAL ORDER: 1/2 oz. MothAway™ SPRAY Liquid Energizer™ (This special liquid energizer™ is a special custom blending spray bottle. Get the best in combination with MothAway™ bags for an additional profit potential in your home and store, and for your own personal collection.)	\$21.99	Add to Cart

[View Cart](#)

Shipping, Handling and Packaging charges of \$2.95 for each item (per set of 3 bags of MothAway™ or bottle of Liquid Energizer™) and the overall cost of MothAway™ pay for in part the cost of packaging materials such as the hand sewn MothAway™ bags themselves and the custom blown glass vials with orifice reducers for precision administration of the Liquid Energizer™, and the fact that each order is hand weighed, measured and dispensed or mixed and then custom vacuum sealed in a rather expensive plastic tubular bag; a very lengthy and labor intensive process.

If you are having any difficulty in buying online then please print and mail us your order form.

Foreign orders add an additional \$1.50 - \$2.50 per item (Note: Extra shipping charges for foreign orders will be calculated and separately billed to you after you have placed and paid for your order).

All payments should be in U.S. currency. Shipping, Handling and Packaging charges not creditable.

Or please email jules@MothAway.com Call (800) 797 6747 for questions only (all credit card orders must be placed online).

All orders must be shipped to the following address: MothAway, P.O. Box 10000





EXHIBIT H

WhoIS registrant information for website confirming registration date of
mothaway.com March 7, 2005, to petitioner

[Start a domain search:](#)
com 

24/7 Sales & Support: (480)505-8877



Your personal
guide can help!
CLICK HERE



Tell your story with the most
personal domain name*

BOB PARSONS

Go Daddy Girls run America.
**WARNING: REQUIRES A BENT
SENSE OF HUMOR.**

WHOIS

Search Results for:

Search Again

 Enter a Domain Name to Check

MOTHAWAY.COM

.com



GO

The data contained in GoDaddy.com, Inc.'s WHOIS database, while believed by the company to be reliable, is provided "as is" with no guarantee or warranties regarding its accuracy. This information is provided for the sole purpose of assisting you in obtaining information about domain name registration records. Any use of this data for any other purpose is expressly forbidden without the prior written permission of GoDaddy.com, Inc. By submitting an inquiry, you agree to these terms of usage and limitations of warranty. In particular, you agree not to use this data to allow, enable, or otherwise make possible, dissemination or collection of this data, in part or in its entirety, for any purpose, such as the transmission of unsolicited advertising and solicitations of any kind, including spam. You further agree not to use this data to enable high volume, automated or robotic electronic processes designed to collect or compile this data for any purpose, including mining this data for your own personal or commercial purposes.

Please note: the registrant of the domain name is specified in the "registrant" field. In most cases, GoDaddy.com, Inc. is not the registrant of domain names listed in this database.

Registrant:

Moth Away
P. O. Box 9008
Rancho Santa Fe, California 92067
United States

Registered through: GoDaddy.com, Inc. (<http://www.godaddy.com>)

Domain Name: MOTHAWAY.COM

Created on: 07-Mar-05

Expires on: 07-Mar-10

Last Updated on: 27-Oct-07

Administrative Contact:

Away, Moth sales@mothfree.com
P. O. Box 9008
Rancho Santa Fe, California 92067
United States
7607519756

Technical Contact:

Away, Moth sales@mothfree.com
P. O. Box 9008
Rancho Santa Fe, California 92067
United States
7607519756

Domain servers in listed order:

NS01.DOMAINCONTROL.COM

NS02.DOMAINCONTROL.COM

MOTHAWAY.NET	\$9.99/yr
MOTHAWAY.ORG	\$9.99/yr
MOTHAWAY.INFO	OLD/NEW/SAVED
MOTHAWAY.BIZ	\$14.99/yr
MOTHAWAY.US	\$12.99/yr
MOTHAWAY.NAME	\$14.99/yr
MOTHAWAYSITE.COM	\$9.99/yr
SITEMOTHAWAY.COM	\$9.99/yr
MOTHAWAYONLINE.NET	\$9.99/yr
ONLINEMOTHAWAY.NET	\$9.99/yr
MOTHAWAYSTORE.ORG	\$9.99/yr
STOREMOTHAWAY.ORG	\$9.99/yr
MOTHAWAYNOW.INFO	OLD/NEW/SAVED
NOWMOTHAWAY.INFO	OLD/NEW/SAVED
MOTHAWAYBLOG.BIZ	\$14.99/yr
BLOGMOTHAWAY.BIZ	\$14.99/yr
MOTHAWAYSHOP.US	\$12.99/yr
SHOPMOTHAWAY.US	\$12.99/yr
MOTHAWAYTODAY.NAME	\$14.99/yr

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Registry Status: clientDeleteProhibited
Registry Status: clientRenewProhibited
Registry Status: clientTransferProhibited
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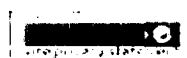
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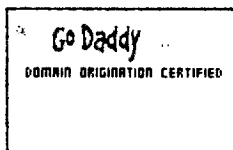


EXHIBIT I

<http://www.recipesource.com/misc/non-food/crafts/00/rec0017.html>

RecipeSource : Miscellaneous : Non-Food Recipes : Craft Recipes : Cedar Chest (Moth-Away)**Sachet**

* Exported from MasterCook *

Cedar Chest (Moth-Away) Sachet

Recipe By : Lisa-Fabfood
Serving Size : 1 Preparation Time : 0:00
Categories : To Post Potpourri

Amount	Measure	Ingredient -- Preparation Method
5	cups	Cedarwood Chips
4	cups	Lavender No.2 -- (Blue-Grey)
2	cups	Tilia Flowers
1	cup	Cellulose Fiber Fixative
1	cup	Cinnamon Sticks -- (1-inch)
1	cup	Cloves - Whole
		OIL: Cinnamon

Blend all.

Posed To Fabfood August 1998 By Lisa <melizajane@aol.com>

NOTES : Sachet & Dream Pillows Sachets are attractive cotton, silk or linen bags filled with potpourri and tied with ribbon. Lace or embroidery may be added. Sachet bags are often small, traditionally about 3 x 5 inches (but you can make them any size). The following recipes are for the potpourri only. Cure a minimum of 4 weeks before filling sachets to maximize aroma.

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EXHIBIT J

<http://www.herbsvt.com/newpetandhouse.html>

PET AND HOUSEHOLD PRODUCTS

MUSLIN SACK ITEMS

MOTH AWAY SACHET - This 8-herb mix has the scent of lavender and cedar. It is very effective and an excellent replacement for mothballs. * I've used Moth Away Sachet for over 20 years and, even though I have an unlimited supply, I've used the same six bags for the last five plus years!

*Mothballs are dangerous. From a recent issue of Real Simple, I offer this excerpt: *On January 25 [2001], the National Toxicology Program released two years of research on naphthalene. In the study, rats were exposed to naphthalene by inhalation - the way we are - in doses comparable to those we receive at home and work. The study concluded that in rats, "naphthalene causes cancer, a finding that scientists and regulators must wrestle with to determine if, as commonly used, it presents a risk to humans as well." Besides naphthalene, mothballs are also made of camphor or paradichlorobenzene. All three are, to varying degrees, toxic to humans. Clothing that has come into contact with these chemicals should be aired out, dry-cleaned, or washed.*

MSM04 Moth Away 1/2 lb. \$8.00 1 lb. \$15.00 0 : Order

NOT HERE KITTY: I created this product years ago when a customer came into my herb shop, just before Christmas, and requested a 'cat repellent.' It seems her cat had a habit of batting ornaments, climbing up the Christmas tree and generally making a mess of things. I looked in my collection of old herbals. They gave me some ideas and I created Not Here Kitty, a blend of ginger, lavender and some green herbs. It worked well for the Christmas tree and I have sold thousands in the 15+ years since.

I finally got some idea of how Not Here Kitty works, when I had a rowdy young tom tearing up the house several years ago. He was especially fond of scratching in the houseplants. I put Not Here Kitty in the plants but he batted them aside! I kept replacing them and, within a day or two, he got the idea. My theory is that the cat considers the placing of Not Here Kitty Sachets about is a way you have of marking your territory. Now some cats are truly repelled right off the bat; some, like my young tom, take a day or two to get the message. Interestingly, once repelled, the cats tend to stay away from a 'marked' area. So you can move the bags to a new location if you wish.

MSN04 Not Here Kitty (bulk) 1/2 lb. \$8.00 1 lb. \$15.00 0 : Order

CATNIP: Grown here in Vermont, this fresh dried organic catnip is guaranteed to stir even the most restrained cat. Available as a sack or as a handcrafted gray fleece 'mouse' - complete with whiskers.

MSC01 Catnip (bulk) 1/2 lb. \$11.00 1 lb. \$20.00 0 : Order

EMPTY SACKS: MUSLIN: I sell them at shows - ready to fill with potpourri or to stretch the muslin items or even to use for Bouquet Garni, herbal baths. You decide!

ORGANDY: Same idea as the muslin, only fancier and definitely not for cooking. Colors vary. Right now I have silver and lavender.

MSE01	1 empty 3x4 muslin sack	\$.35	0	:	
MSE03	3 empty muslin sacks	\$1.00	0	:	<u>Order</u>
MSE04	12 empty muslin sacks	\$3.50	0	:	

CSS02	2# Bag Spring Lavender Carpet Stuff	\$6.95	0	:	
CSR02	2# Bag Rose Geranium Carpet Stuff	\$6.95	0	:	<u>Order</u>
CSB02	2# Bag Balsam Carpet Stuff	\$6.95	0	:	

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HOME


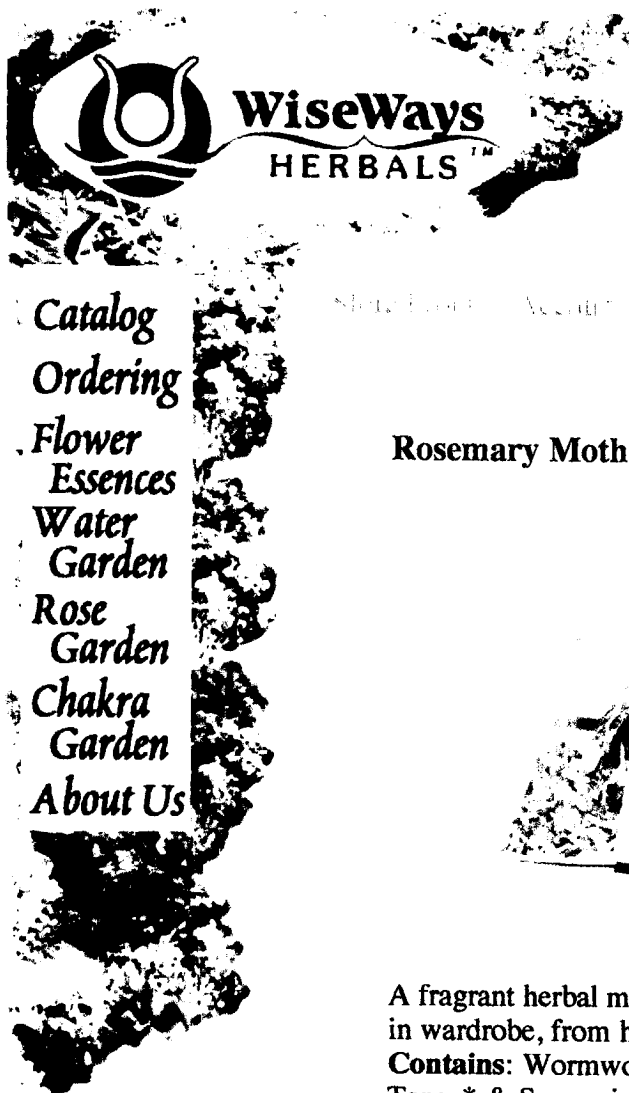
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EXHIBIT K

[http://wiseways.com/Merchant2/merchant.mvc?Screen=PROD&Store_Code=WH&
Product_Code=RMAS&Category_Code=](http://wiseways.com/Merchant2/merchant.mvc?Screen=PROD&Store_Code=WH&Product_Code=RMAS&Category_Code=)



WiseWays Herbals

Natural Products for Well Being

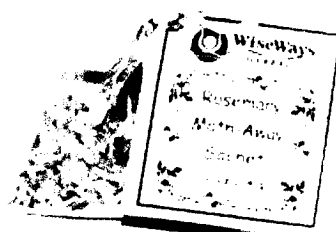
Toll Free 1-(888)-540-1600

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Rosemary Moth Away Sachet 1/2 oz.

Quantity in Basket: *none*

Price: **\$3.50**



Quantity: 1

[Add to Cart](#)

A fragrant herbal moth repellent for clothes and linens. Hang herbal sachets in wardrobe, from hangers or place in drawers.

Contains: Wormwood, Mugwort, Southernwood*, Rosemary, Lavender, Tansy* & Spearmint Leaf & Flowers, Calamus & Vetivert Root, Cloves & Geranium, Lemon & Cedarwood Essential Oils. 4 oz. +/-

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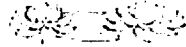
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Singing Brook Farm
99 Harvey Road
Worthington, MA, USA 01098



EMail: info@wiseways.com
Toll Free (888) 540-1600



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EXHIBIT L

Moth Away Linen Sachet at

<http://www.everlastingherbfarm.net/vintage.htm>



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The Everlasting
of Linen

Vintage Linen Sachets

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Sachets

Wendy's Mom

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Gift

Classical
Furniture

All of our sachets on this page are made from vintage linens that have been washed, pressed and sewn into a unique sachet. Each one features the beautiful handiwork of many yesterdays, made by a person of long ago.

Each of these vintage linen sachets is one of a kind. Call or phone me if you are looking for certain colors or designs so we can find the perfect sachet for you.

PHONE: 800.332.8111

Everlasting B. of Sachets: These sachets contain dried lavender flowers, known to retain their scent for a long time. You can place these sachets in a drawer, under a bed pillow, in your work desk or car. In the Victorian Language of Flowers, lavender means many things: happiness, devotion, success, luck, virtue and gentleness. Just crush the lavender buds to renew and release their wonderful perfume!



Sachet from Yesterdays: Each "Sachet from Yesterdays" is unique and features its own special design and colors. These are approximately 5 inches long by 4 inches wide. \$20.00

Sweet Pillow: A medium sized vintage linen sachet, also filled with lavender buds. These are approximately 6 inches long by 5 inches wide. \$12.00

Sweet Bag: A small vintage linen sachet, also filled with lavender buds, approximately 4 inches by 2 1/2 inches. \$8.00

Wendy's Vintage Linen Sachet: Each sachet is created from a vintage linen and filled with Cedar for "Memory of Love", Cardamom for "Compassion", Sage for "Immortality", Cinnamon for "My Fortune is yours", Ginger for "Smile" and Juniper for "Protection" plus other herbs and spices, essential oils and fragrance oils to protect your linens and sweaters all year through. These sachets have a wonderfully spicy and earthy scent. Approximately 6 1/2 inches square.

Wendy's Vintage Sachet: \$20.00

Cedar Linen Sachet: Filled with cedar shavings from the beds by brother makes, these vintage linen sachets have a long lasting scent from the cedar wood signifying "Memory of Love", "Think of Me", "Friendship" and "Strength." Just squeeze to release the scent of cedar over and over again. Approximately 7 inches square.

Cherish Sachets:

\$20.00

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EXHIBIT M

Moth Away at

<http://www.medicinebeeherbals.com/store.php?item=243>

[Store](#) > Cedar Chest Blend - Moth Away (0.5 lb.)

Cedar Chest Blend - Moth Away (0.5 lb.)

A beautiful aroma of natural botanicals and spices including Cedar wood chips, lavender, Tilia flowers, cellulose fiber fixative, Cinnamon sticks, Cloves and Cinnamon fragrance oil

Put small of large bagfuls in your closet, cedar chest or drawers, where moths may be. Last 9-12 months. Comes in half-pound resealable bags.

You can optionally add drawstring muslin bags (25 count) with your bath blend in two sizes: 3x5 or 5x7.

Price: \$10.99

Qty: 1



[Email Us for a Quote](#)

Other items you might like:

- [Muslin bags](#)

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EXHIBIT N

Moth Away sachet at

<http://www.kettlebyherbfarms.com/itm00157.htm>

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Kettleby Herb Farms

FOR ALL YOUR HERBAL NEEDS! MAKE SURE TO CHECK OUT OUR NEW 'DAY SPA'
COLLECTION...WITH AN AMAZING INTRODUCTORY PRICE!!!!

CATALOG

Moth Away Sachet

cad6.00

All natural herbal moth and insect deterrent. Useful for drawers, closets or any other clothes storage areas. Package contains 3 sachets.

Reference: B8075

Size, capacity: 3 sachets/pkg

Payment Methods:

**MasterCard, Visa, cheque, money order. *PAYMENT MUST BE
RECEIVED BEFORE ITEMS CAN BE SHIPPED**

Ref	Description	Price	Quantity Required	Add To Basket
B8075	Moth Away Sachet	6.00 each	1	ADD



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P.O. Box 224,
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Ontario,
K0K 1H0
Canada
Tel: 1-877-727-8344
Fax: 613-475-0230

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www.kettlebyherbfarms.com

EXHIBIT 0

Moth Away potpourri at
<http://www.thepotpourrishack.com/catalog.php?category=24>


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#2106. LAYERED LAVENDER SOAP

WHAT A BEAUTIFUL SCENT FOR OUR LAVENDER OVERS! LAYERED LAVENDER IS MADE OF GOATS MILK SOAP BASE WITH LAVENDER ESSENTIAL OIL FOR THE RELAXING THERAPUTIC BENEFITS AND TOPPED WITH A LAYER OF SUGAR CRYSTALS. EACH BAR IS PACKAGED IN A CELLO BAG, SPRINKLED WITH LAVENDER BUDS AND TIED WITH A PRETTY RIBBON.

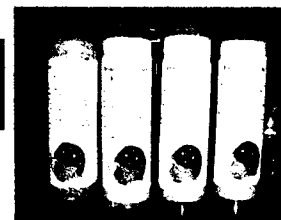
Price: \$3.99

1

Qty:

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**PRIMITIVE COUNTRY
APPLE**
\$7.99



**AROMATHERAPY
CANDLES**


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#2098. AROMA TART MELTS

A PACKAGE OF 6 BREAK AWAY AROMA TARTS. JUST BREAK ONE OFF AND POP IN YOUR TART WARMER FOR A PLEASANT SCENT IN YOUR HOME.

Price: \$6.99

Scent: Mood

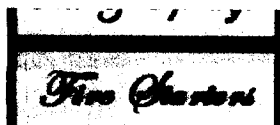
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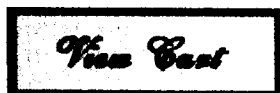
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**#2095. SACHET BAGS (SET OF 3)**

DARLING DRAWER SACHET BAGS MADE OF HIGH QUALITY FABRIC, STUFFED

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[Bath Tea](#)
[Rosehip Finns](#)
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WITH A BIT OF FIBERFILL FOR SHAPE AND REAL LAVENDER. THESE ARE GREAT TO STUFF IN SHOES, DRAWERS, CLOSETS OR JUST HAVE LAYING AROUND TO SNIFF! WE CAN ALSO STUFF THESE LITTLE GEMS WITH EUCALYPTUS PETALS AND SCENT BEADS OR MOTH AWAY POTPOURRI MADE OF CEDAR, LAVENDER AND CINNAMON! SET OF 3 BAGS.

Price: \$9.99

Scent: • Eucalyptus
Lavender
Moth Away

1

Qty:

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Email:

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#2085. AROMATHERAPY CANDLES

AROMATHERAPY CANDLES ARE THE UP AND COMING THING. PLEASANT AROMAS ARE PROVEN TO EFFECT OUR OLFACTORY BULB, THE PART OF THE BRAIN THAT IS INVOLVED IN DETECTING ODORS. CERTAIN SCENTS CAN RELAX, ENERGIZE OR CHANGE OUR MOODS! ~THE POTPOURRI SHACK~ BRINGS TO YOU, OUR SET OF AROMATHERAPY CANDLES. YOU WILL GET A SET OF 4 PILLAR CANDLES. CRANBERRY FOR RELAXING WITH LAVENDER AND FAINT MUSK. GOLDEN YELLOW FOR INVIGORATING WITH PEPPERMINT, WINTERGREEN AND FAINT CITRUS. BURNT ORANGE FOR PASSION WITH A FLORAL BLEND AND STRONG ROSE BOUQUET. SAGE GREEN FOR MOOD WITH ROSES AND NOTES OF JASMINE AND MUSK. THE CANDLES ARE TALL PILLAR CANDLES APPROXIMATELY 9 INCHES TALL BY 2 INCHES WIDE AND ARE 9 OZ. CANDLES. NO TWO CANDLES ARE THE ALIKE. WE USE SNOW FLAKING IN OUR WAX WHICH CAUSES IT'S OWN DESIGN. OUR CANDLES ARE MADE FRESH TO ORDER. ORDER BY THE SET OR INDIVIDUAL.

INDIVIDUAL/SET: • Set \$24.99
INDIVIDUAL \$6.99

SCENT: RELAXING

1

Qty:

Add to Cart



#2076. PRESSED BOTANICAL CANDLE



[Click for Detail](#)

A BEAUTIFUL CHELSEA-FLORAL SCENTED CANDLE WITH REAL PRESSED FLOWERS IN THE WAX. WHITE WAX WITH SOFT BOTANICALS GIVES OFF A SOFT FLORAL SCENT. THIS CANDLE IS 3" HIGH BY 3" WIDE, LEAD FREE WICK.

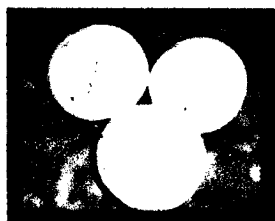
****DOES NOT COME WITH CANDLE STAND****

Price: \$13.99

1

Qty:

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#2077. BOTANICAL BATH BOMB

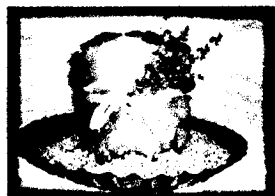
TRY OUR LUSCIOUS BATH BOMBS MADE WITH DELICATE ROSE PETALS AND ROSE ESSENTIAL OIL. DROP ONE BOMB INTO TUB WATER AND WATCH IT SPIN AND FIZZ. NURTURE YOUR SKIN IN ALMOND OIL AND ROSE BUD PETALS. EACH BOMB SOLD INDIVIDUAL.

Price: \$2.99

1

Qty:

Add to Cart



[Click for Detail](#)

#2031. LUSCIOUS LAVENDER CANDLE

THIS CANDLE SMELLS SOOOOO GOOD! THIS IS A LARGE 2 LB CANDLE WITH DOUBLE WICKING FOR EVEN BURN. SPRINKLED WITHIN THE WAX ARE DELICATE LAVENDER BUDS. STRONGLY SCENTED WITH LAVENDER OIL, A BUNDLE OF DRIED LAVENDER AND BOUNDED WITH PRETTY MATCHING RIBBON. CANDLE IS 4 1/2 WIDE BY 4 3/4 TALL.

1 in stock

Price: \$17.00

1

Qty:

Add to Cart



[Click for Detail](#)

#10. LAVENDER VICTORIAN BOOT SACHET

YOU'LL LOVE OUR PRETTY LAVENDER VICTORIAN BOOT! WE USED A PRETTY PURPLE FLORAL FABRIC AND STUFFED WITH FIBERFILL IN THE BOOT HEAL AND TOE THEN PACKED DELICATE LAVENDER BUDS IN THE TOP PART OF

BOOT FOR THAT BEAUTIFUL LAVENDER SCENT. DECORATED WITH PRETTY SPUN ROPING, DELICATE LITTLE PEARL BEADING, GOLD AND PEARL BUTTONS UP THE FRONT OF THE BOOT AND A PRETTY BOW TIE AND A BEAUTIFUL ROSE COLOR FLOWER. WE ALSO ATTACHED RIBBON TO THE TOP HEAL FOR YOUR HANGING IF YOU PLEASE. THIS WOULD MAKE A LOVELY CHRISTMAS GIFT FOR THE VICTORIAN OR LAVENDER LOVER! HANG IN YOUR CLOTHING CLOSET, LAY ON THE DRESSER OR PUT IN YOUR GARMENT DRAWER FOR THAT PRETTY LAVENDER SCENT. THIS BOOT IS 7" BY 7" AT ITS WIDEST POINT. IT WILL COME IN A PRETTY BOX WITH A RIBBON FOR GIVING. I HAD A LADY FROM CANADA ORDER SEVERAL OF THESE FOR CHRISTMAS DECORATIONS ON HER TREE. WHAT A GREAT IDEA! IF YOU WOULD LIKE TO ORDER A LARGE ORDER, PLEASE EMAIL ME FOR PRICING DISCOUNT. ~AN ORIGINAL BY THE POTPOURRI SHACK~!

1 in stock

Price: \$12.99

1

Qty:

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© The Potpourri Shack. All rights reserved.
Graphics by Hattie's Workshop
Website built with Hattie's U Design It.

EXHIBIT P

moth away sachet at

[http://www.peacevalleylavender.com/cart.php?target=product&product_id=16218
&category_id=252](http://www.peacevalleylavender.com/cart.php?target=product&product_id=16218&category_id=252)



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Moth Away Sachet

Price: \$12.00

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Lavender Bunch
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Votive St. Germaine en Laye Lavender Candle
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Price: \$12.00 ☐ [Add to Cart](#)
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Description

Filled with fragrant lavender blossoms to scent a drawer, closet, pillow or luggage. Squeeze the lavender buds and enjoy this sublime fragrance of summer. 2 styles: folded envelope or tied bag. Fabrics vary.

Price: \$12.00

Options

Choice of package: [Folded Envelope](#)

Quantity: 1

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1. Moth Away Sachet
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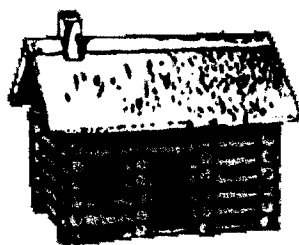
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EXHIBIT Q

moth away sachet at

<http://www.cabincreation.com/remedies.html>

[Home](#) / [About Us](#) / [Products](#) / [Herbal Remedies](#) / [Flax/Lavender Collars](#)



Cabin Creations

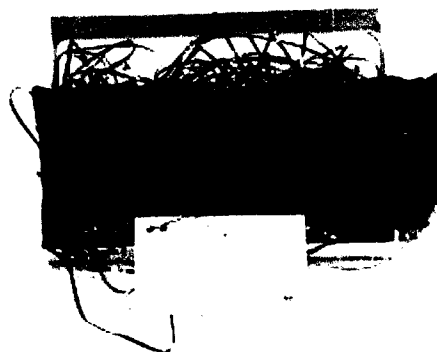
Handmade Crafts and Gifts

[View Cart](#)

Herbal Remedies

Natural health products such as:
Headache Remedy, Worry Bag, Corn Collars, etc

Stress Relief



Corn Collar

Handmade corn collars
help to reduce stress.
Made from either
cotton or flannel.

\$10.00

Quantity:

[Add To Cart](#)

Eye Pillow

Handmade.
Relieve stress and tension.
Comes made with
Flax or Lavender

\$7.00

Quantity:

[Add To Cart](#)

Worry Bag

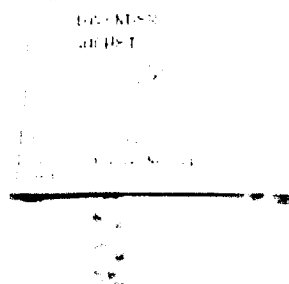
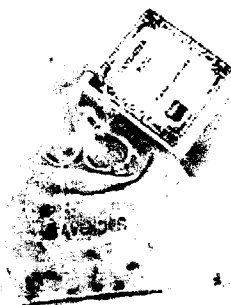
Squeeze & activate
herbs in muslin bag.

\$5.50

Quantity:

[Add To Cart](#)

Lavender



Lavender Buds

Muslin bag holds ¼ cup of pure #1 lavender

\$4.00

Quantity:

Add To Cart

Lavender Sachet

Muslin bag holds ¼ cup of pure #1 lavender

\$4.00

Quantity:

Add To Cart

Lavender Hearts

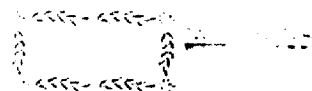
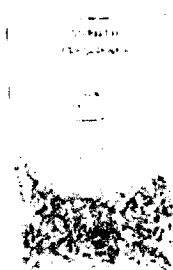
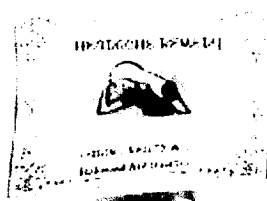
Pair of hearts covered with pure #1 Lavender and decorated with small rose and statice.

\$12.00

Quantity:

Add To Cart

Personal Comfort



Headache Remedy

Natural relief for headaches & stress.

\$5.50

Quantity:

Add To Cart

Breath Freshener

All natural seeds to pop in mouth.

\$2.50

Quantity:

Add To Cart

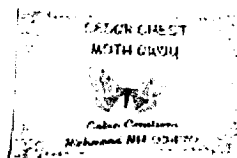
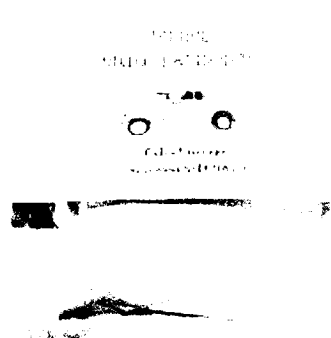
Dream Pillow

\$12.95

Quantity:

Place between your pillow & pillowcase		Add To Cart
Cough Syrup Herbs	\$1.00	Quantity:
Closeout (while supplies last)		Add To Cart
Sore Throat Herbs	\$1.00	Quantity:
Closeout (while supplies last)		Add To Cart
Awake & Alert	\$2.50	Quantity:
Closeout (while supplies last)		Add To Cart
Men's Sachet	\$2.50	Quantity:
Closeout (while supplies last)		Add To Cart

Environment Comfort



Auto Freshener	\$5.50	Quantity:	Add To Cart
Muslin bag to hang in car and release scent.			
Moth Away Sachet	\$7.50	Quantity:	Add To Cart

For more information on our products, please visit our website at www.cabincreation.com. We offer a wide variety of products for your home and car. Our products are made with natural ingredients and are safe for your family and pets. We also offer a variety of services, including custom scenting and product demonstrations. Please contact us today for more information.

Payment Options Include:
Mastercard, Visa
Paypal, Check, M.O.
 Currently, no catalog is available.



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EXHIBIT R

rosemary moth-away sachet at
<http://www.differentdaisy.com/nexternalhtml/rosemary-moth-away-sachet-.htm>

The www.differentdaisy.com shopping cart has moved, the link above has no longer valid. Please go to **VeganGoods.com** to shop for hundreds of vegan, cruelty-free, natural and earth friendly, cruelty-free products.

Rosemary Moth-Away Sachet

A fragrant herbal moth repellent for clothes and linens.
Hang sachet in wardrobe, from hangers or place in drawers.

vegan bug repellent, vegan insect repellent, cruelty-free

Purchase Rosemary Moth-Away Sachet

Other products in the category Home and Office / Cleaning & Misc.:

Cruelty-Free Glue -- All-purpose glue containing no animal ingredients and produced without animal testing. Glues often contain . . .

Heather's All Purpose Vegan Soap -- Made from orange oil, sodium citrate (a salt that occurs naturally), natural vegetable thickener and . . .

Heather's Oxygen Bleach Cleanser -- Heather's Oxygen Bleach Cleanser contains sodium percarbonate, calcium carbonate, soda ash, sodium sulfate, . . .

Sample Size Household Products -- 2 oz. If you want to try the Natural Choices products before investing in them, just order these sample . . .

Earth Friendly Cream Cleanser -- A natural based cream cleanser that is extremely effective at cleaning stainless steel, porcelain, hard . . .

Earth Friendly RTU Orange Plus All-Purpose Cleaner -- 22 oz. Orange oil cleaning power at a value based price. This powerful concentrated all

purpose cleaner . . .

Orange 100 Cleaner and Degreaser -- One of the toughest cleaning jobs in and around the home is greasy and grimy dirt. ORANGE 100 is one . . .

Naturally Free Cleaner -- Naturally-Free Quart READY-TO-USE Trigger Spray bottle. Naturally-Free is an all-purpose cleaner developed . . .

Glass and Surface Cleaner -- No ammonia, alcohol or harsh volatile solvents. 0% VOC (Volatile organic Compounds) NEW REVOLUTIONARY . . .

Planet Dishwashing Liquid -- 32 oz. An effective grease-cutting formula with lasting suds that is gentle on your hands. It contains . . .

FREE Dishwashing Liquid by Natural Choices -- 8 oz. FREE of: · Fragrances · Dyes · Petroleum Solvents · Respiratory and Skin irritants · Free . .

Earth Friendly Dishmate Hand Dishwashing Liquid -- 22 oz. A powerful liquid hand dish washing product that is mild on sensitive skin. Dishmate's almond . . .

Earth Friendly WAVE Automatic Machine Dishwashing Detergent --

Biodegradable, No Phosphates, Chlorine Free, Removes Dried on Foods, Removes Tough Stains. Ingredients: . . .

Fruit & Vegetable Wash by Healthy Harvest -- Safe, all-natural formula helps remove pesticides and bacteria from produce. 18 oz. bottle. vegan . . .

Heather's Window Cleaner -- What a fresh clean smell!!! Heather's Window Cleaner is made from apple cider vinegar and naturally derived . . .

Earth Friendly Window Cleaner -- Using an age old ingredient, vinegar, and a little help from coconut based soap, WindowKleen cleans windows, . . .

Earth Friendly Stain and Odor Remover -- 22 fluid ounces Naturally based formula of enzymes and plant ingredients work well against removing . . .

Earth Friendly Shower Cleaner -- 22 oz. Earth Friendly Products Shower Kleener is the only non petroleum based, naturally derived shower . . .

Earth Friendly Toilet Bowl Cleaner -- 16 Fluid Ounces. A pleasant and natural scented liquid toilet bowl cleaner that really works. Cleans . . .

Heather's Basin Tub & Tile Cleaner -- Heather's Basin, Tub & Tile Cleaner is a non-fuming product made from organic acids, salt, orange oil . . .

Mineral Magic -- Mineral Magic removes calcium and lime scale and surface rust quickly, easily and SAFELY. There is no . . .

Oxy Dish Automatic Dishwashing Detergent -- 1 pound Based on the same ingredients as our highly successful Oxy-Prime Powdered Laundry Detergent, . . .

OXY-DRAIN Drain Maintainer & Freshener -- Oxy-Drain contains the TRUSTED POWER of OXY-BOOST Oxygen Bleach! Oxy-Drain safely cleans and sanitizes . . .

Ecos Earth Friendly Furniture Polish -- 22 oz. With olive oil and orange oil, this formula protects, cleans and cares for your wood while . . .

Sweet Cicely Furniture Oil by Wise Ways -- 4 Fluid Ounces. All natural fragrant oil made with herbs and essential oils to clean, condition and . . .

Wood Cleaner & Polish by Natural Choices

-- 8 oz. A natural orange oil and soy oil product that cleans and shines wood and other household surfaces . . .

返回首页

[<< Back](#)

Shopping Carts by Nexternal Solutions

EXHIBIT S

Moth Away sachets at <http://www.moonwiseherbs.com/othergoodies.htm>

[Main Page](#) | [Our Products](#) | [Calendar of Events](#) | [Wild Edibles Meal](#)
[What People Are Saying](#) | [Herbal Apprenticeship Program](#) | [Legislation](#) | [Links](#) | [Herbs for Sustainability](#) | [Recipes](#)



Moonwise Herbs

Earth Centered Herbal Education and More!

Herbal Salves, Lotions,
and Healing Sticks

Fine Creams
and Lotions

Handmade
Herbal Soaps

Handmade
Brooms

Other
Goodies

Books

Dry Herbs

Infused Oils
Massage, Body, and Bath

Tinctures

Miscellaneous Goodies:



New!! Beeswax and Honey

We now have really raw honey and top quality beeswax. We get these from a local beekeeper in our area. The honey has not been heated and the beeswax is rich and aromatic. This is what we use in our products as well as our daily life.

Honey is packed in mason jars and is crystalized, as real raw honey should be.

Honey Pint Jars 16 ounce \$6.50 [Add to Cart](#)

Honey Quart Jar 32 ounce 12.00 [Add to Cart](#)

Beeswax

Small 2 ounces \$2.50 [Add to Cart](#)

Large 2 pounds \$10.00 [Add to Cart](#)

Cedar-Comfrey Lotion Bar

2 ounce bar \$6.00

Lotion bars are a great hand and body moisturizer. No water required! To use: Hold the bar in your hands until it begins to soften-from the heat of your body. Then rub on soles of the feet, knees, elbows, or wherever extra moisture is needed. We have added comfrey to this bar for it's moisturizing and deep healing abilities. Cedar is added for it's protective qualities. This bar is lightly scented with cedar infused oil and refreshing aroma of

[Add to Cart](#)

3 bars for \$15.00

beeswax.

[Add to Cart](#)

contains: beeswax, olive oil infused with comfrey and cedar, palm and coconut oil.

Desert Sage Bundles

Approximately 10" long-these are good size bundles that last a long time.

Bundles all contain sage and some contain lavender and rosemary as well. These are beautiful hardy bundles wrapped with crochet thread, which holds the bundle together but allows the beauty of the plants to shine through. Sage was traditionally burned to clear energy for ceremony. Today many people still burn sage for ceremony as well as to clear energy in a new living space.

Single Bundle \$8.00 [Add to Cart](#)

3 Bundles \$20.00 [Add to Cart](#)

We hand harvest all of our sage in eastern Washington and Wyoming..

Jewelweed Decoction

We harvest the plant at the height of it's potency and make a strong decoction. We then can this in an 4 ounce jar to preserve the medicine for later use. Jewelweed preparations have been used historically to promote healing of plant induced skin rash (ie from poison ivy and poison oak), burns, eczema, bruises, bites, sores and ringworm. Once open we suggest freezing any left over quantity in ice cube trays for later use.

4 ounce glass
canning jar

\$6.00

[Add to Cart](#)



Florida Pine Needles

These are perfect for crafting pine needle baskets. We hand harvest these while visiting family in Florida. We will include our instruction sheet for pine needle basket weaving with each order.

\$9.00 per pound

[Add to Cart](#)

Catnip Bags

We harvest the plant at the height of it's potency, air dry it and fill each bag by hand. They are stamped with an image of a cat and in a muslin bag. Our cats go wild over these and have been caught in the sack of freshly stuffed bags.

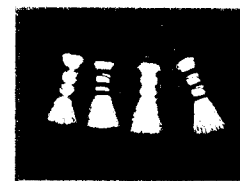
3.50 each

[Add to Cart](#)

3 for \$9.00

[Add to Cart](#)

Pot Scrubber: These handmade brushes work wonders. They last for a long time and can be composted. We make these from broom corn, which is tough and holds up under pressure. They are great for scrubbing pots as well as scrubbing the dirt off of freshly harvested roots.



\$3.50 each

[Add to Cart](#)

3 for \$9.00

[Add to Cart](#)

3.50 each

Moth Away Sachets[Add to Cart](#)

We harvest 10 moth repelling plants at the height of potency, air dry them and fill each bag by hand. They are stamped with an image of the moon and in a muslin bag. We have found these to be helpful in keeping moths away from our drawers and closets!! And they smell good!!!

3 for \$9.00

[Add to Cart](#)**Roasted Herbal Beverage**

Contains: Fresh Roasted Burdock Root, Nettle Leaf and Dandelion Root and Greens

This delicious beverage is rich and nutritive. Unlike caffeinated beverages this concoction offers the body a wide array of minerals. It supports the liver and offers the body increased stamina. Enjoy this hot or cold!! We harvest and roast the plants ourselves for the freshest quality.

Directions: Place one teaspoon of roasted beverage in a one quart teapot or jar-for a single cup use 1/4 tsp (a little goes a long way. Pour boiling water over and steep for up to 4 hours. Strain and enjoy-plain or with honey and milk.

2 ounces \$6.00

[Click here to purchase](#)**Elderberry-Elecampane Cough and Cold Syrup**

This is our favorite cough and cold syrup. We make our own liquor from fresh elderberries and mix it with our very own Elecampane honey. With the anti-viral qualities of Elderberries and the Antispasmodic effect of Elecampane this syrup helps to soothe symptoms as well as speed the healing process from cough, cold and flu.

Contains: Elderberry Liquor and Elecampane Infused Honey (raw unpasteurized)

2 Ounce Amber Bottle \$9.50

[Add to Cart](#)

4 Ounce Amber Bottle \$16.00

[Add to Cart](#)**Flower and Plant Press**

Pressing plants is a great way to preserve them for including in art projects as well as for creating your own herbarium.

Specimens are pressed in a plant press, which consists of a wooden frame (for

\$15.00

[Add to Cart](#)

rigidity), corrugated cardboard ventilators (to allow air to flow through the press) and blotter paper (to absorb moisture). This plant press is tightened using bolts with wing nuts. The objective of pressing plants is to extract moisture in the shortest period of time, while preserving the integrity of the plant. If you are creating an herbarium for identification purposes you will want to get the best specimen you can, that includes an example of the leaf structure and patterns as well as the flower. Generally plants take 3 weeks to press; this will vary depending how much moisture is present. To minimize moisture it is best to collect plant material on a dry day. Happy Pressing!!!

[View Cart](#)

We offer a variety of Handcrafted Herbal Wares.

We grow and wild craft a majority of the herbs in our products,
and when we purchase herbs we choose organically grown.

If you are looking for a product and do not see it here
feel free to inquire as many of our products are seasonal
and we are continually adding products as well!

Thanks for viewing our products!!

EXHIBIT T

moth away sachets at

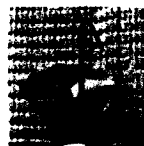
http://www.etsy.com/view_listing.php?listing_id=14108795


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Handmade Items: tags, titles :

[Search](#)[Home](#) > [All Listings](#) > [LAVENDERDRAGONHERBS's shop](#) > [View MY HOME'S MOTH AWAY SACHETS \(TM\)](#)Here are some more items from [LAVENDERDRAGONHERBS](#)
[PINK, WHITE & LAVENDER
WILD CLOTHES CO.™™™](#)

[SACHETS FLEET™™™ \(LAVENDERDRAGON™™™\)](#)

[PINK & WHITE SACHETS
LAVENDERDRAGON™™™](#)
MOTH AWAY SACHETS (TM)**Stop Moths and other Insects for Eating Your Clothes****A Combination of Insect Repelling Herbs will keep your Cloths Fresh and Protected.****Organically Grown Herbs are Wildcrafted/Handpicked fresh right from my Garden at time of Order.**[sold out](#)**seller info****LAVENDERDRAGONHERBS**[shop](#) · [profile](#) · [wanted](#)rating: **3038, 100% pos.**joined: **May 19, 2007**location: **JANESVILLE, CALIFORNIA, USA****seller's other items**

95 items for sale

page tools

- ☐ Add item to favorites
- ☐ Add seller to favorites
- ☐ See who hosts this seller
- ☐ See who hosts this item
- ☐ Report this item as a problem

Listing is for 4 - 1 oz Sachets

Comes with a hanger for use in your closet.

Bag color and Design will vary

Bags Made for me by GreenWillow Crafts

[View GreenWillow Crafts's shop on Etsy](#) (shopid:14070254)

All Products, Pictures and Discriptions in this store are the sole property of Lavender Dragon Herbs under Copyright and Trademark Laws.

[View GreenWillow Crafts's shop on Etsy](#)

[Email this to a friend](#)

additional item info

Listed on Sep 8, 2008

Listing # 14108795

Viewed 4 times

[Report this item to Etsy](#)

sold out

Tags

plants and herbs, dried herbs, shoes
essence, sachets, host team, lavender
dragon, pest removal, home, gift, all natural,
medicinal, tea, gift wrap avail, layaway

Materials





mint, lavender and other herbs, seeds, and
barks

Item ships from: United States

ship to:

- United States: \$4.00 (\$4.00 shipped with another item)
- Everywhere Else: \$6.00 (\$6.00 shipped with another item)
- United Kingdom: \$6.00 (\$6.00 shipped with another item)
- Canada: \$4.00 (\$4.00 shipped with another item)

LAVENDERDRAGONHERBS accepts the following forms of payment:

-    
- Money Order
- Other (see description)

Got a question about this item?

- [Contact the seller](#)
- [View all items for sale](#)

EXHIBIT U

Letters exchanged between registrant's attorney and petitioner in 2005

August 23, 2005

Mr. Charles D. McClung, esq.
1600 ODS Tower
601 S.W. Second Ave.
Portland, OR 97204-3157

Dear Mr. McClung:

We do not believe that there is a conflict between your mark Moth•Away and ours MothAway. If anything, we are entitled to the trademark and you are not.

First of all, our use in commerce far predates yours. We have been selling MothAway since 1987, including online since 1992 on first AOL then COX and more recently at our own domain. If you had a problem with our mark online, why wait 13 years since our first internet presence to notify us?

Secondly, your mark is quite weak and at most descriptive. Also, your mark differs from ours. Yours is two words, with a dot in between, Moth•Away. Ours is one word, MothAway. See e.g. Sunmark Inc. v. Ocean Spray Cranberries, Inc., 1994 U.S. Dist Lexis 15186 (holding that where the mark in question "sweet-tart" was descriptive, and the allegedly infringing mark lacked the hyphenation in between, there was no prima facie likelihood of confusion or infringement).

Further, your mark is for the term Moth•Away in stylized form only. It appears that you were unable to obtain the mark for the words themselves as this was too generic. As such, you have no exclusive right to the words themselves. At best, you have an exclusive right to the term with the dot in between in a specific stylized form only. See e.g. In Re K-T Zoe Furniture, 16 F.3d 390 (1994) (holding that when a mark is a typographical design, "it is entirely possible to disclaim all the [word or letter] components of such a design mark." However, the registration may be limited to the stylized form of the otherwise unregistrable words (quoting U.S. Steel v. Vasco Metals Corp., 294 F.2d 1009, 1012 (1968)).

The history of registration of "Moth Away" trademarks and your amendments filed bolster this interpretation. Like other marks, there have been many different forms of "Moth Away" registered in the past. Your own application for Moth Away (two words without the dot in between) for your clothes hanger proves that you believe that there are different levels and types of "Moth Away" marks and these may coexist.

It appears from the record that you may even have attempted to obtain a word-mark for the moth repellant product, but were unable to do so, and thus obtained the stylized mark only. The word-mark on hangers is confined to hangers, and has not even been registered. This prosecution history appears to undercut any attempt to assert a general word-mark at this stage, and again seems to establish that your mark, if valid, may coexist with ours.

Mr. Charles D. McClung, esq.
Portland, OR
August 23, 2005
- page two -

Even assuming your mark can overcome all of those hurdles, given that it verges on descriptive at best there is no likelihood of confusion, and to attempt to prove this would require extensive marketing studies at your end, which we will refute with our own studies and surveys, should it come to that. Since your mark is stylized only and there is no prima facie case for infringement, the burden would be on you to prove the likelihood of confusion.

For these reasons and more, we believe that our mark at worst may coexist with yours, or that our mark is the only valid one of its kind.

In short, if yours is valid, so is ours.

Sincerely,

M. Kashani

/Encl.



LAW OFFICES
CHERNOFF, VILHAUER, McCLUNG & STENZEL, LLP
INTELLECTUAL PROPERTY LAW
INCLUDING PATENT, TRADEMARK, COPYRIGHT
AND UNFAIR COMPETITION MATTERS

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* DENNIS E. STENZEL
* CHARLES D. McCLUNG
* DONALD B. HASLETT
* J. PETER STAPLES
* WILLIAM O. GENY
* NANCY J. MORIARTY
* KEVIN L. RUSSELL

DANIEL P. CHERNOFF
(1935-1995)

1600 ODS TOWER
601 S.W. SECOND AVENUE
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* TIM A. LONG
* KURT ROHLFS
* BRENNAN K. LEGAARD
* SUSAN D. PITCHFORD

* REGISTERED PATENT ATTORNEY

DAVID S. FINE
SENIOR LAW CLERK

July 11, 2005

Our File: 3772.9999

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Princess, LLC
15721 Bernardo Heights Parkway, Suite B-30
San Diego, CA 92128

Dear Sir or Madam:

We represent Richards Homewares in its intellectual property matters and our client has requested that we send this letter to you. Richards Homewares is the owner of U.S. Trademark Registration No. 1,651,872 for the mark MOTH AWAY for a "blend of herbs used as a moth repellant." A copy of the Trademark Office database listing of this registration is enclosed.

Our client recently learned that Princess, LLC is selling an herbal moth repellant under the MOTH AWAY trademark. A copy of your Web site offering this product for sale is enclosed. Princess, LLC's sale of a moth repellant under the MOTH AWAY trademark is an infringement of Richards Homewares trademark rights. Accordingly, on behalf of Richards Homewares we hereby demand that Princess, LLC immediately discontinue the advertisement and sale of moth repellant under the MOTH AWAY trademark, including the use of the mark in your Web page.

It would go a long way towards ameliorating this situation if you would immediately inform me that you intend to comply with Richards Homewares demand and discontinue all use of the MOTH AWAY trademark. If we do not receive such assurance from you, Richards Homewares will have no alternative but to take further action to prevent infringement of its rights in the MOTH AWAY trademark.

Sincerely,

Charles D. McClung

CDM/lma
Enclosures

cc: Richards Homewares, Inc.